COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO.: 3623-03
BILL NO.: HCS for HB 1816
SUBJECT: Contracts and Contractors; Office of Administration
TYPE: Original
DATE: March 1, 2000

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
General Revenue	$0	($242,293)	($231,689)
Various	$0	(Unknown)	(Unknown)
Total Estimated Net Effect on All State Funds *	**$0**	**($242,293)**	**($231,689)**

***Does not include possible increased costs for services and goods.**

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
None	$0	$0	$0
Total Estimated Net Effect on All Federal Funds	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Local Government	**$0**	**$0**	**$0**

Numbers within parentheses: ( ) indicate costs or losses
This fiscal note contains 9 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration - Division of Facilities Management (DFM)** assume the requirements in this proposal would result in a long certification process. The DFM assumes it would need two Contract Specialists to comply, resulting in annual costs of approximately $125,000.

The **Office of Administration - Division of Purchasing and Materials Management (DPM)** assumes this would apply to almost all of the professional and general services contracts awarded. To ensure that all the additional requirements of this proposal would be met, the DPM assumes it would need one additional Buyer III position (1 FTE at $37,260 per year). The Buyer would either prepare the cost estimate of providing the service by public employees or review the cost estimate prepared by the state agencies. After the bids have been submitted, the Buyer would prepare a comprehensive analysis of the contract costs.

Officials from the **Office of Administration - Division of Design and Construction (D&C)** assume that based on recent history, the D&C has the potential of entering approximately 125 contracts with outside Architects and Engineers annually, with approximately 20% (25) having a value over $100,000. The performance of the complete privatization analysis is estimated at 80 hours, resulting in the need for one additional FTE (25 contracts x 80 hours = 2,000 annual hours). The additional staff would include one Contract Specialist II (1 FTE at $34,992 per year) to perform privatization analysis.

NOTE: In a similar previous proposal, the Office of Administration - Division of Purchasing and Materials Management assumed they would need two additional staff and the Division of Design and Construction would have no fiscal impact. However, based on subsequent analysis, the COA assumes they would still need two additional staff to implement the provisions of the proposal; however, one new staff person would be located in the Division of Design and Construction and one in the Division of Purchasing and Materials Management.

Officials from the **Department of Social Services - Division of Medical Services (DMS)** assume this proposal could result in additional unknown contract costs greater than $100,000. This proposal could result in difficulties in hiring contractors due to the two year limitation. The allowance of longer contract time periods usually results in a substantial savings by allowing the contractor a greater period of time to recover start-up costs and also avoids the down time and losses that occur if the contractor changes every two years.

ASSUMPTION (continued)

Officials from the **Department of Natural Resources (DNR)** assume, for purposes of this fiscal note that if they have asked for, or been given the authority, to contract services through the appropriation process that they have complied with the intent of this proposal.

The proposed legislation appears to conflict with the existing statute regarding contracts with concessionaires. Section 253.080 RSMo states "The director may award by contract to any suitable person, persons, corporation or association the right to construct, establish and operate public services, privileges, conveniences and facilities on any land, site or object under the department's control for a period not to exceed twenty-five years with a renewal option, and may supervise and regulate any and all charges and fees of operations by private enterprise for supplying services and operating facilities on state park areas."

If this is not the intent of this legislation, the provisions of this bill may result in the department requesting additional resources.

Officials from the **Coordinating Board for Higher Education (CBH)** assume the Missouri Student Loan Program contracts with a servicer for loan application processing, loan maintenance, and various other services required to administer the federal student loan program. This contract is maintained because current staffing levels would not be nearly sufficient to perform the necessary work. These loan administration services have always been contracted out. The services contracted for have never been provided by the agency itself, and are not subject to the provisions of this bill due to the change in 37.552(4).

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would regulate privatization of governmental services or support operations through contracts with private entities. The CTS has no basis for estimating any increase in civil litigation as a result of the proposal, but there is a potential, and the volume is unknown until the proposal has been in place for some time. Any significant increase in the volume of civil litigation would have a corresponding impact on the state and local budget of the judiciary. There is some potential that the proposal could increase administrative and operating costs of future contracts entered into by the judiciary. However, it is not feasible to predict such impacts in advance.

Officials from the **Department of Transportation (DHT)** assume that if mentioning the Department of Transportation includes MHTC, then this legislation will have no fiscal impact. However, if the Department of Transportation does not include MHTC, any agreement with MHTC which is valued at $100,000 or more would be subject to the act. Since MHTC is the correct legal entity for contracts, rather than DHT, it is assumed the reference to the Department of Transportation must also reference MHTC.

ASSUMPTION (continued)

Officials from the **Department of Revenue (DOR)** assume the proposal would result in a fiscal impact. However, it is impossible to determine a cost savings or a cost without first obtaining bids and reviewing same on multiple projects.

Officials from the **Department of Insurance (INS)** assume the INS currently contracts out the examinations required for licensure. The contract is bid on a three-year cycle through COA and the contractor collects the examination fees and the department does not provide any funds to the contractor. Legislation would have no fiscal impact on the department, but it would make changes in the COA bid process for this contract.

Officials from the **Department of Agriculture (AGR)** assume any savings in personal service would translate to contract costs, resulting in a net fiscal impact of $0.

Officials from the **Missouri Department of Conservation (MDC)** stated the proposed legislation would not appear to have any fiscal impact on MDC funds, based on the assumption that it would not apply to construction and maintenance type of contracts with private contractors.

Officials from the **Department of Economic Development (DED)** assume that specific budget or statutory authority to contract with entities would override these provisions. The DED assumes it has no contracts that fit the definition of "privatization contracts". If this is subsequently proven to be an erroneous assumption, possible fiscal impact could be incurred by the DED and result in additional budget requests.

Officials from the **Department of Public Safety (DPS), Department of Elementary and Secondary Education (DES), Department of Health (DOH)** and the **Department of Mental Health (DMH)** assume the proposed legislation would have either no or minimal fiscal impact on their agencies.

Officials from the **Department of Corrections (DOC)** did not respond to our fiscal impact request.

FISCAL IMPACT - State Government	FY 2001	FY 2002	FY 2003

GENERAL REVENUE FUND

Costs - Office of Administration (COA) Division of Facilities Management (DFM)			
Personal Service (2 FTE)	$0	($90,479)	($92,470)
Fringe Benefits	0	(27,822)	(28,518)
Expense and Equipment	0	(13,150)	(5,305)
Total Costs - DFM	$0	($131,451)	($126,563)
Costs - Office of Administration (COA) Division of Purchasing and Materials Management (DPM)			
Personal Service (1 FTE)	$0	($39,146)	($40,125)
Fringe Benefits	0	(12,037)	(12,338)
Expense and Equipment	0	(4,039)	(318)
Total Costs - DPM	$0	($55,222)	($52,781)
Costs - Office of Administration (COA) Division of Design and Construction (D&C)			
Personal Service (1 FTE)	$0	($36,763)	($37,682)
Fringe Benefits	0	(11,305)	(11,587)
Expense and Equipment	0	(7,552)	(3,076)
Total Costs - D&C	$0	($55,620)	($52,345)
ESTIMATED NET EFFECT TO GENERAL REVENUE FUND	**$0**	**($242,293)**	**($231,689)**

VARIOUS STATE FUNDS

Costs- Increased Contract Amounts	**($Unknown)**	**($Unknown)**	**($Unknown)**

FISCAL IMPACT - Local Government	FY 2001	FY 2002	FY 2003

$0	**$0**	**$0**

FISCAL IMPACT - Small Business

This proposal could impact small businesses to the extent those businesses have privatization contracts with the state.

DESCRIPTION

This substitute regulates the use of privatization contracts by the state, except that the Department of Transportation is not covered. Privatization contracts are agreements or a combination or series of agreements in which a non-governmental person or entity agrees with a state agency to provide services valued at $100,000 or more which could have been provided by regular employees of the agency. The substitute:

(1) Creates the Public Service Accountability Act and prohibits agencies from entering into privatization contracts, except under the conditions of this substitute;

(2) Requires agencies to solicit competitive sealed bids for privatization contracts based on a written proposal. Bid requirements are outlined in the substitute;

(3) Requires contractors who enter into privatization contracts to compensate employees at the rate a state employee doing similar work would receive or the average private sector compensation rate, whichever is greater. The compensation must include the value of health insurance and other benefits;

(4) Limits privatization contracts to 2 years;

(5) Requires privatization contracts to contain a provision requiring the contractor to offer available positions to qualified public employees whose employment was terminated due to privatization contracts;

(6) Requires a nondiscrimination and equal opportunity provision in all privatization contracts;

(7) Prohibits public funds from being used to support or oppose unionization;

DESCRIPTION (continued)

(8) Requires agencies to prepare a comprehensive written estimate of the cost of using regular

public employees before considering privatization contracts. The estimate must include employee pension, insurance, and other benefits;

(9) Requires contractors to consider a contractor's past performance and its record of compliance with federal, state, and local laws before awarding the contract;

(10) Requires the agency to publicly designate the bidder that it proposes to award the privatization contract to;

(11) Requires the agency to prepare a comprehensive written privatization contract cost analysis;

(12) Requires the agency to certify in writing that all provisions of this law have been followed, the quality of services satisfies fiscal and quality requirements, the cost is 10% less than if the state had completed the services, and the privatization contract is in the public's best interest;

(13) Prohibits a privatization contractor from subcontracting without the approval of the agency;

(14) Requires privatization contractors and subcontractors to file an annual financial audit with the agency;

(15) Requires agency access to privatization contractors' project financial records, facilities, and employees;

(16) Requires the privatization contractor to submit at least an annual report detailing progress and quality of the project. The contractor must also submit a report of its compliance with all federal, state, and local laws and citations, complaints or findings issued by an administrative agency or courts;

(17) Allows the agency to seek contractual remedies for any violation of the privatization contract. Other persons or entities are also allowed to bring a claim against a contractor for certain violations of this act;

(18) Restricts ownership rights or interest in any public record by a privatization contractor and requires agencies and contractors to comply with all open records laws;

(19) Restricts the use of privatization contract records and agency contract records. The substitute outlines remedies which may be taken for violation of these restrictions;

<u>DESCRIPTION</u> (continued)

(20) Prohibits retaliation against any public employee or private contractor employee who, acting in good faith, discloses information or participates in any investigation or proceedings against any agency relating to violation of privatization contracts. The identity of any employee complaining in good faith to the agency or elected official about violation of a privatization contract will be confidential; and

(21) Requires private contractors to post provisions of the privatization contract law and information pertaining to the filing of a charge for the violation of certain provisions of the act.

The substitute has an effective date of July 1, 2001.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

This proposal would not affect Total State Revenues.

SOURCES OF INFORMATION

Office of Administration - Division of Facilities Management
Office of Administration - Division of Purchasing and Materials Management

Office of Administration - Division of Design and Construction
Department of Social Services
Department of Natural Resources
Coordinating Board for Higher Education
Office of State Courts Administrator
Department of Transportation
Department of Revenue
Department of Insurance
Department of Agriculture
Missouri Department of Conservation
Department of Economic Development
Department of Public Safety
Department of Elementary and Secondary Education
Department of Health
Department of Mental Health

NOT RESPONDING: Department of Corrections

Jeanne Jarrett

Jeanne Jarrett, CPA
Director
March 1, 2000